

ORIGINAL



0000016167

BEFORE THE ARIZONA CORPORATION CO.

MARC SPITZER  
CHAIRMAN  
WILLIAM A. MUNDELL  
COMMISSIONER  
JEFF HATCH-MILLER  
COMMISSIONER  
MIKE GLEASON  
COMMISSIONER  
KRISTIN K. MAYES  
COMMISSIONER

2004 DEC 10 A 9:51

AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission  
**DOCKETED**

DEC 10 2004

DOCKETED BY	
-------------	--

IN THE MATTER OF QWEST )  
CORPORATION'S PERFORMANCE )  
ASSURANCE PLAN )  
\_\_\_\_\_ )

DOCKET NO. T-01051B-03-0859

COME NOW MCI, Inc., on behalf of its regulated subsidiaries, ("MCI"), Eschelon Telecom, Inc. ("Eschelon"), AT&T Communications of the Mountain States, Inc. and TCG of Phoenix, Inc. (collectively "AT&T"), and DIECA Communications Company dba Covad Communications ("Covad") (collectively, the "CLECs"), and submit the following remarks regarding Qwest's unilateral attempt to change the Long Term PID Administration ("LTPA") multi-state collaborative forum where changes to PIDs ("Performance Indicator Definitions") are to be addressed.

On August 5, 2004, Qwest Corporation ("Qwest") informed the Commission's Staff of Qwest's plan to change the LTPA multi-state collaborative forum from an industry forum agreed upon by the parties to an informal method created only by Qwest by which the CLECs would have to submit proposals for PID changes to Qwest and not Commission staffs. Qwest's alleged process to allegedly replace LTPA contains many flaws. As an initial matter, the process was developed by Qwest without any input from

the LTPA group, state staffs, or the CLEC community. Despite all the work that was done by these groups in developing LTPA when Qwest had an incentive to work collaboratively to obtain Section 271 approval, Qwest did not work with any of these groups after obtaining that approval. Consequently, at a minimum, there is little clarification about how the Qwest alternate process would work.

Even without clarification, however, Qwest's plan on its face has several problems that would need to be overcome before a replacement process, if a replacement is needed at all, should be approved. One problem is that Qwest did not bother to seek acceptance or approval at all before declaring it would invoke this new process instead of the industry's LTPA. The state staffs appear to have addressed the unilateral nature of Qwest's plan by simply proceeding with LTPA II regardless of Qwest's announced intentions.<sup>1</sup> Participation in LTPA is optional. If Qwest chooses to abstain from LTPA meetings attended by state staffs and CLECs, and information is needed from Qwest, at least some of the state Staffs may have the ability to serve discovery on Qwest to obtain needed information. In its Order, the Commission should indicate that its staff will participate in LTPA II.

In the event that Qwest decides to seek industry acceptance and/or Commission approval of an alternative to LTPA, CLECs suggest that Qwest first accept comments on its plan and revise the plan before re-submitting it. Qwest may be able to reach consensus on some revisions to LTPA, if Qwest was to take a cooperative, rather than unilateral, approach. For example, CLECs are not necessarily opposed to Qwest's suggestion of having a single repository for the initiation of proposed PID changes,

---

<sup>1</sup> See Exhibit A (e-mail from Tom Spinks, Regulatory Consultant with the Washington Utilities and Transportation Commission, dated October 1, 2004, providing notice of opportunity to identify issues to be considered for LTPA II.

provided that it is not the sole process for development and implementation of PID changes.

Qwest could also move closer to consensus if it added time frames to its plan. For example, a review of Qwest's documented process shows that there are no set time frames for certain processes, such as:

(a) When Qwest Service Management (i.e., account teams) are to determine whether this new process should kick in. While the Qwest account teams serve important functions in the business-to-business relationship of CLEC to Qwest, Qwest's account managers do not have the experience or expertise necessary to determine whether, or when, the process should apply or when they much respond to the CLEC to let them know that the process will or will not be used;

(b) When community meetings will occur. Because the community meetings are not standardized (there could be one or more meetings at intermittent times, it is unclear whether they will occur at all). As a consequence, the initiating Party is not able to anticipate what is expected of them nor whether Qwest is obligated to address its concerns in a timely manner; and

(c) Once agreement has been reached with a CLEC, there is no set timeframe for the implementation of that CLEC's requested PID modification(s).

Established time frames drive expectations and proper resolution standards. In addition, the documented process does not elaborate on what should happen when a PID change impacts one of the following: (a) a process change within Qwest (that requires a change request); or (b) a system enhancement (that requires a change request). Further,

the process does not address how Qwest produces the PID results (which may require process and/or system changes).

At the most fundamental level, the Qwest proposed process suffers because there is no Commission oversight. Such oversight is necessary not only when there is consensus, but also when there are questions around how or when changes should be implemented. Such oversight is also necessary when there is no consensus and CLECs are left with nothing more than Qwest's "denial" – which may or may not be grounded in any legitimate or equitable basis. Equally important, Staff and Commission input and oversight will facilitate, to the maximum extent possible, the ability of all industry stakeholders (and in particular smaller CLECs in more rural states) to have a say in the final PID/PID modification(s). Such protection of the public interest is a particularly important because an agreement to change a PID that is important to a CLEC may be made in exchange for a revised or reduced commitment by Qwest on another PID. Because Qwest's proposed process will result in default standards for all CLECs, Qwest's process could work to the detriment of a CLEC that cares about the latter standard but not the former. In essence, Qwest's proposed process forecloses participation to the detriment of competitors and consumers. Finally, under Qwest's proposal, individual CLECs may be forced to litigate more PID disputes at the Commission, rather reaching agreement in a collaborative process. The LTPA has been successful in addressing a number of identified issues that have resulted in PID modifications. Additionally the LTPA can provide the means to address how any PID modification would impact PAP and/or Wholesale Service Quality Plans, a critical ingredient that cannot be overlooked. Without LTPA, agreements regarding remedy

plans, such as the one reached in six month review of the Washington PAP, would not be likely. As such, CLECs recommend the Commission reject Qwest's PID Modification Process as a replacement for the established LTPA process and retain the LTPA process. As noted above, the CLECs are, nevertheless, committed to negotiate with Qwest appropriate changes to an ongoing LTPA process.

Respectfully submitted this 10<sup>th</sup> day of December, 2004.

**DIECA COMMUNICATIONS, INC. dba  
COVAD COMMUNICATIONS  
COMPANY**



Michael Patten  
**Roshka Heyman & DeWulf, PLC**  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
Phone: (602) 256-6100  
Fax: (602) 256-6800  
Email: mpatten@rhd-law.com

**Authorized to sign for:**

**MCI, INC.**

Contact: Thomas F. Dixon  
707 - 17<sup>th</sup> Street, #4200  
Denver, Colorado 80202

**ESCHELON TELECOM, INC.**

Contact: Karen L. Clausen  
730 Second Ave. South, Suite 1200  
Minnesota, Minnesota 55402

**AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.  
AND TCG OF PHOENIX, INC.**

Contact: Letty S.D. Friesen  
1875 Lawrence Street, Suite 1575  
Denver, Colorado 80202

Original and 13 copies of the foregoing  
filed this 10<sup>th</sup> day of December, 2004 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered/mailed  
this 10<sup>th</sup> day of December, 2004 to:

Timothy Berg, Esq.  
Theresa Dwyer, Esq.  
Fennemore Craig, PC  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Norman G. Curtright  
Corporate Counsel  
Qwest Corporation  
4041 North Central Avenue, Suite 11  
Phoenix, Arizona 85014

Laurel L. Burke  
Qwest Corporation  
1801 California Street  
10<sup>th</sup> Floor  
Denver, Colorado 80202

Eric Heath  
Sprint  
100 Spear Street, Suite 930  
San Francisco, California 94105

Joan S. Burke  
Osborn Maledon, PA  
2929 North Central Avenue, 21<sup>st</sup> Floor  
Phoenix, Arizona 85067

Thomas H. Campbell  
Michael T. Hallam  
Lewis and Roca  
40 North Central Avenue  
Phoenix, Arizona 85004

Thomas F. Dixon  
Worldcom, Inc.  
707 17<sup>th</sup> Street, 39<sup>th</sup> Floor  
Denver, Colorado 80202

Scott S. Wakefield, Esq.  
Residential Utility Consumer Office  
1110 West Washington, Suite 220  
Phoenix, Arizona 85007

Michael M. Grant  
Todd C. Wiley  
Gallagher & Kennedy  
2575 East Camelback  
Phoenix, AZ 85016

Mark DiNunzio  
Cox Communications  
1550 West Deer Valley Rd  
MS DV3-16, Bldg C  
Phoenix, Arizona 85027

Daniel Waggoner  
David Wright & Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101

Traci Grundon  
David, Wright & Tremaine  
1300 SW Fifth Avenue  
Portland, Oregon 97201

Letty Friesen  
AT&T Law Department  
1875 Lawrence Street, #1575  
Denver, CO 80202

Diane Bacon, Legislative Director  
Communications Workers of America  
5818 N. 7<sup>th</sup> Street, Suite 206  
Phoenix, Arizona 85014

Joyce Hundley  
U S Department of Justice  
Antitrust Division  
1401 H Street NW #8000  
Washington DC 20530

Andrew O. Isar  
Telecommunications Resellers  
Association  
4312 92<sup>nd</sup> Avenue, NW  
Gig Harbor, WA 98335

Jeffrey W. Crockett  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004

Michael Morris  
Allegiance Telecom of Arizona, Inc  
505 Sansome Street, 20<sup>th</sup> Floor  
San Francisco, CA 94111

Richard Sampson  
Z-Tel Communications, Inc.  
601 S. Harbour Island, Ste 200  
Tampa, Florida 33602

Richard P. Kolb  
Vice President of Regulatory Affairs  
One Point Communications  
Two Conway Park  
150 Field Drive, Ste 300  
Lake Forest, Illinois 60045

Attorney General  
Office of the Attorney General  
1275 West Washington  
Phoenix, Arizona 85007

Steven J. Duffy  
Isaacson & Duffy  
3101 North Central Avenue, Suite 740  
Phoenix, Arizona 85012

Karen Clauson  
Eschelon Telecom  
730 Second Avenue South, Ste 1200  
Minneapolis, Mn 55402

Curt Huttshell  
Citizens Communications Co. of Az.  
4 Triad Center, Suite 200  
Salt Lake City, UT 84180

Brian Thomas  
Time Warner Telecom, Inc.  
223 Taylor Avenue North  
Seattle, WA 98109

Mitchell F. Brecher  
Greenberg Traurig, LLP  
800 Connecticut Avenue, NW  
Washington, DC 20006

Gary L. Lane, Esq  
6902 East 1<sup>st</sup> Street, Suite 201  
Scottsdale, Arizona 85251

Kevin Chapman  
SBC Telecom, Inc.  
1010 N. St. Mary's, Room 1234  
San Antonio, TX 78215-2109

Ms. Jane Rodda  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
400 West Congress  
Tucson, Arizona 85701

Maureen A. Scott, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Ernest Johnson, Esq.  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

By Mary Ippolito



# **EXHIBIT "A"**

---

**From:** Maiser@puclist.state.id.us on behalf of Tom Spinks [tspinks@wutc.wa.gov]  
**Sent:** Friday, October 01, 2004 10:47 AM  
**To:** LT271@puclist.state.id.us  
**Subject:** next LTPA

Following discussions with Qwest and CLECs at the ROC meeting in Missoula, Mt. last month, the LTPA staff is issuing a notice of opportunity to identify issues to be considered for LTPA II. At this time we are only seeking to identify the scope of issues. The scope of issues will be limited to adding, deleting or modifying PIDs, changes to PID designations of benchmark, parity or diagnostic and changes to PID standards. Attached is a blank PID issue matrix to use for identifying issues. Please provide responses to the LT271 listserve by October 29, 2004. Once all issues have been identified, staff will convene a conference call with all parties to discuss how to proceed.

(See attached file: PID Issues Matrix.doc)

Tom Spinks  
Regulatory Consultant  
WUTC  
(360) 664-1365

EXHIBIT A

12/9/2004

PID Six-Month Review Collaborative

## Master Issues Matrix

**As Of: XX/XX/XX**

[illegible]

## Worksheet Key

Proposal Number	Sequential numbering of proposals – numbering to be assigned in final version of worksheet (2/28) once all proposals are in so that related proposals (e.g. same PM) will be grouped together numerically.
PID# or Subject	PID number the proposal applies to or a short title of the subject of the proposal.
Proposed By (Who)	Identification of the party making the proposal
Proposal (What)	A complete description of the proposal being made, including text for the business rules that reflect the letter and intent of the proposal
Rationale for Proposal (Why)	Explanation, in detail, of why the proposing party feels this proposal has merit and should be accepted. Can refer to additional documentation the party provides which supports the proposal.
Alternative Proposal/Position	Alternate proposals, if any, along with a statement of position by the other party or parties stating positions.
Status of Proposal	Field to track the status of the proposal – Open, Deferred, Agreed to Original Proposal, Agreed to Alternate Proposal